



HCBS Choice of Settings FAQ

- 1. I'm not familiar with many HCBS providers currently offering services in non-disability specific settings. Will more HCBS providers do that in the future?**

Yes. The HCBS Settings Rule requires that individuals have choice of where they receive waiver services, including non-disability specific settings. Agencies are now aware of this requirement and evaluating how they can offer services in non-disability specific settings. Some providers have received a HCBS Settings Finding Report identifying their need to come into compliance with this requirement. OADS, in conjunction with Subject Matter Experts through Economic Systems, is working with providers to offer information and support.

- 2. If an individual wanted her Community Support staff to assist her at a yoga class in the community, would the Community Support provider pay for the class?**

HCBS providers are not expected to underwrite costs like this. However, HCBS providers should assist with exploring options. Are there free classes or scholarships available? Can the person set up a savings plan? These conversations might open the door to employment discussions.

- 3. Does the requirement "choice of providers" extend to the specific person that works with them? To what extent can an individual select their Direct Support Professional (DSP)?**

If a person is dissatisfied with a DSP, they can request a change. HCBS providers should begin thinking about how to include individual's input when hiring DSPs. Some providers currently include individuals who utilize services when hiring/interviewing staff.

- 4. Who is to be offered choice of services and settings for individuals with appointed guardians?**

Both the individual and guardian should be part of discussions offering choice of services and settings.

- 5. Several HCBS requirements in provider owned or controlled settings (choice of roommate, privacy, lockable doors) relate to the living "unit". Is "unit" defined as house, apartment, or bedroom?**

A person's living unit is the person's home and bedroom if the person shares a living unit with unrelated individuals.



6. What are the expectations for provider owned or controlled residential settings where individuals receive Home Support- Agency, Family-Centered Support, or Shared Living with an unrelated provider, regarding the requirement for a legally enforceable lease or residency agreement? Will OADS provide a sample lease agreement?

OADS is not able to provide sample lease agreements. Provider owned or controlled residential settings must demonstrate adherence to the following minimum requirements for lease/residency agreements:

- A. A lease, residency agreement or other form of legally enforceable written agreement between the provider/setting and each individual participant that:
 - i. Provides the same responsibilities/protections from eviction as all tenants under landlord tenant law of the state, county, city or other designated entity. *Note: Per CMS, state must ensure lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.*
 - ii. Includes a minimum 30-day notification clause for termination of lease/agreement.
 - iii. Includes a process and timeframes for notice of rent increase.
 - iv. Includes an appeal process for residents in licensed settings or a grievance process for unlicensed settings.
 - v. With regard to visitors, lease or residency agreement may not impose restrictions on visitors except to define how long a visitor may stay before the visitor would have to become a tenant under a legally enforceable lease or residency agreement in order to continue to remain at the setting.
- B. The expectation is that the provider will review the legally enforceable agreement with each participant receiving HCBS and their guardian/family prior to moving into the setting, to ensure a common understanding regarding the expectations and protections outlined in the agreement.

7. Does the service agreement for individuals residing in licensed settings cover the lease requirement?

A service agreement is separate from a lease agreement and does not serve as a replacement/substitution for a lease/residency agreement.



8. Is a lease required in a Shared Living-Unrelated Provider setting?

Yes. All provider owned or controlled settings require a lease/residency agreement.

9. Can an individual choose to buy or rent a home and then request Home Support- Agency, if they are the only person living there?

At present, new Home Support- Agency settings must serve at least two people, absent an ADA modification.

21.07-16 Home Support- Agency Per Diem. As of December 24, 2012, Home Support- Agency Per Diem placements will only be approved at provider operated homes where a minimum of two (2) members reside.

Teams should consider how to accommodate a person's wishes to receive home support services in a non-disability specific setting. Home Support- ¼ hour and/or Home Support- Remote Support may be an option, coupled with natural supports. Additionally, non-disability specific settings are not always comprised of people living alone. Supported living in a non-disability specific setting may include providers coming into a person's home that they share with others who receive supports.

10. Is OADS looking into amending this policy so that individuals requiring 24/7 supports would have a non-disability specific option? Do the service definitions in Section 21 require amendments? If one and two person placements are not supported, in general, how does Maine intend to encourage home supports provided in non-provider owned or controlled settings?

OADS is reviewing and evaluating amendments to MaineCare rule to further align with the HCBS Settings rule and promote choice to receive services in non-disability specific settings.

11. How would licensing work in a Home Support-Agency setting that is owned or rented by the member or their family, rather than the provider?

When a current or prospective Home Support- Agency setting is owned or rented by the member or the member's family, the waiver provider can request an exception to the licensing requirement from OADS. Optionally, the waiver provider could continue to pursue a license for this setting.

12. Will case managers receive updated PCP QA's to reflect the new requirements?

Yes. OADS provided an updated PCP QA Tool on 2/1/2021. Person Centered Plans re-versioned for Annual Planning on or after 2/1/2021 should include:



Documentation regarding Choice of Settings, Services and Providers: Choice of setting must include at least **one non-disability specific setting for identified waiver service(s)**. This is documented in Phase 1 of Process Coordination, Part 1 and in the Case Management Service Planning Narrative.

13. Does the expectation to discuss non-disability settings to receive the waiver service just apply to services that are being requested or currently received by the individual?

Both. The requirement regarding Choice of Settings, including at least one non-disability specific setting, needs to be implemented for services currently received as well as new services being requested.

14. Does a person have a right to live alone without roommates?

For residential services, an option for private room must be offered if the person has sufficient financial resources available for room and board costs associated with having a private room.

15. Do individuals have the ability to “veto” potential new housemates?

Providers are encouraged to engage individuals in the selection of housemates to ensure compatibility. The Department believes conversations and “meet and greets” ensure longevity amongst housemates.

16. NET Transportation brokers are requiring individual’s full person-centered plans. How are we able to ensure one’s privacy/confidentiality in this instance?

The Office of Aging and Disability Services will re-visit this requirement with the Office of MaineCare Services to ensure individual’s right to privacy.

17. What should I do if the individual and/or their guardian are not interested in choosing a new service setting?

- OADS provided training regarding the HCBS requirement for choice of setting specifically for families and guardians on 1/28/2021. The recorded webinar is located on the OADS website [here](#). Please make people aware of this resource.
- Families and guardians may be reluctant and small steps or changes are the best way to start. Offer opportunities to see something that is different. Guardians should be encouraged to ensure individuals are receiving services in the least restrictive setting.
- It is a case manager/care coordinator role to ensure individuals are aware of all their options including introducing new options worth considering.
- Avoid making statements like “we are doing this because it is the federal rule”.



- As a case manager/care coordinator, some of the hardest work you do is trying to raise the expectations of someone's capacity or potential. Highest quality of a person's life should be a shared goal.
- Ultimately, if after sharing options, including at least one non-disability specific setting, the individual and/or guardian make an informed choice to remain in the current setting, the case manager/care coordinator will document this in the PCP.

18. Where do HCBS providers fit into the conversation around choice of setting between case managers and individuals served?

Beginning 2/1/2021, case managers/care coordinators will ensure Person Centered Planning (PCP) discussions include choice of settings, including at least one non-disability specific setting, for all waiver services. Discussions will focus on both existing services and new services being requested. Should the individual (and/or guardian if applicable) choose a new setting for an existing service, the current provider will then inform the Planning Team if they can offer that service in the selected setting. If this cannot occur immediately, the individual should consider whether they are comfortable if small steps or changes can be made to deliver services in the new setting. If not, the case manager/care coordinator will work with the individual (and/or guardian if applicable) to explore new providers to deliver services in the desired setting.

19. How do providers gauge what's available for community activities in a setting's community? Providers are encouraged to research and explore community offerings.

Some communities offer free weekly newspapers and community bulletin boards, and many groups have social media platforms. Adult education, local libraries and town halls also have a wealth of information available. Using tools to get out and map a community in conjunction with people in services is a great way to learn about what is out there.

20. Affordable housing in the community is not widely available. What financial resources and housing options exist to support HCBS Settings Rule requirements?

Medicaid Waivers cannot pay for housing. Options to consider may include:

- **Employment.** Maine is an [Employment First](#) state. Employment increases people's housing options by having additional resources to put toward their choice of housing.
- **Section 8/Subsidized Housing.** These are programs that can assist people with affordable housing options in the private market and may be portable when an individual chooses to move. Section 8 applications can be made through a [centralized wait list](#). Other housing subsidies with additional eligibility criteria



may include [Shelter Plus Care](#) and the [Bridging Rental Assistance Program \(BRAP\)](#).

- **HUD Section 811.** This program is designed specifically for individuals on one of Maine's Waivers (Section 18, 19, 20, 21, or 29). MaineHousing provides the [Project Based Rental Assistance \(PRA\)](#).
- **Resources for Home Ownership:** HUD provides resources to help individuals buy, maintain, and keep a home: <https://www.hud.gov/states/maine/homeownership>

21. Are waitlists being established to track service requests that the current system cannot support?

OADS collects data from Person Centered Plans (PCPs) and other assessments (e.g. Services and Supports Assessment V7) in EIS which allows the Department to monitor trends in unmet needs, identify barriers to meeting needs, and identify trends in services provided to individuals served.

22. Is the conflict-free case management rule going to be revised to allow clients choice of providers without restrictions?

There is no expectation that this federal requirement will change. Additionally, the requirement for conflict free case management exists in state rule, 14-197 CMR ch.10.

23. If there is no key to a bedroom door in a group home or shared living home-unrelated caregiver, do they have to get one? If the client can safely use a key?

Yes. In provider owned or controlled residential settings, individuals have a right to lockable entrance door(s) to the person's living unit (and bedroom if the person shares a living unit with unrelated individuals), and only the individual and appropriate staff have keys to door(s). Therefore, a functional bedroom door lock is required on the bedroom door. Bedroom door locks are not required when an individual resides in a family home including Shared Living-Related providers.

24. How do providers meet the door lock requirements for individuals who experience severe anxiety and behaviors due to childhood trauma when a door lock is closed or locked?

This is an example of when a HCBS right modification may be needed. There is an assessed need (severe anxiety/trauma) and disabling and/or removing the lock would be a modification for health and safety reasons. The planning team will discuss the need for a modification as part of the Person Centered Plan (see [HCBS Right Modification webinar](#)).



25. In some communities, fire inspectors have stated locks on bedroom doors do not meet fire codes, how can a provider be compliant if the fire inspectors will not approve this?

Providers are encouraged to check back with their fire inspectors to verify that bedroom door locks are not permitted or if only certain bedroom door locks are permissible and identify which door locks meet fire code requirements.

26. How do these requirements get implemented during COVID-19 e.g. having visitors?

During the COVID-19 emergency, it remains critical that HCBS providers are practicing pandemic safety precautions, consistent with CDC and [OADS Guidance](#). Planning Teams should continue to use the [COVID-19 Risk/Benefit Discussion Guide](#) to weigh the risks/benefits of engaging in community activities and connecting with visitors, but options may, at times, be limited to virtual visits or outside visits using safe practices.

27. When will Evergreen “go live”?

Based on the expanded scope of work on the Evergreen project to include HCBS requirements, the release date is to be determined (TBD). OADS will send out communication later in February or early March 2021 to let EIS users know more about the revised work plan and Evergreen implementation date.

28. Can we also get copy of the slideshow or information on the slides?

The HCBS Choice of Settings PowerPoint and recorded webinar are located on the OADS website under HCBS Training and Resources: <https://www.maine.gov/dhhs/oads/about-us/initiatives/hcbs/training-and-resources>.